In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 460

ELMER SAMUEL CHAPMAN AND JAMES TERRELL KNIGHT, PETITIONERS

v.

UNITED STATES OF AMERICA

No. 459

JAMES TERRELL KNIGHT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Both petitioners in No. 460 were convicted of possessing sugar and a Dodge truck intended for use in violation of the Internal Revenue laws relating to

distilled spirits, a misdemeanor under 26 U.S.C. 5686(a). Petitioners do not here deny that the verdict against them was amply supported, but attack only their arrest and the concomitant seizure of the truck and sugar.

The circumstances in which petitioners were arrested and the sugar seized are set forth in some detail in the opinion of the court of appeals. Petitioners argue that since sugar is not contraband, the officers ipso facto could not see the misdemeanor being committed in their presence so as to have authority to arrest under 26 U.S.C. 7608, and that therefore the search and seizure of the sugar and truck cannot be justified as incident to arrest. As the court of appeals held, however, the officers not only saw petitioners in possession of the sugar, they saw them have possession under circumstances which gave them probable cause to believe that the sugar was intended for an unlawful purpose. Any more stringent requirement as to the agents' knowledge of petitioners' subjective intent would in effect prohibit any arrest without a warrant for violation of 26 U.S.C. 5686(a) and related statutes. Moreover, irrespective of the right to arrest the individuals, the agents had authority to seize the truck and sugar on probable cause to believe that they were subject to forfeiture under 26 U.S.C. 7301 and 7321. *Grogan* v. *United States*, 261 F.2d 86 (C.A. 5), certiorari denied, 359 U.S. 944.

In No. 459, petitioner Knight attacks the revocation of probation previously imposed for another offense. He admits that if the conviction involved in

No. 460 is sustained, there was reason to revoke probation (Pet. 3). He argues only that, if that conviction is reversed, the revocation of probation would be improper since the additional evidence supporting revocation, which was unrelated to the sugar incident (Pet. 3), had been known to probation officers for two years without their taking any action. Since petitioner's conviction in No. 460 has been, in our view, properly sustained by the court below, the petition in No. 459 raises a theoretical question. In any event, the other evidence amply supported revocation without regard to the conviction in No. 460, and it was plainly recent enough to be relevant.

Both petitions for writs of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER, 1969.

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